

**ORIGINAL**

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13 Attorneys for Defendant  
14 DEL MONTE FOODS COMPANY

15 UNITED STATES DISTRICT COURT

16 DISTRICT O

17 2:07-cv-00689-RLH-RJJ

18 MARGARET PICUS, an individual; on  
19 behalf of herself, and on behalf of others  
20 similarly situated,

21 Plaintiffs,

22 vs.

23 WAL-MART STORES, INC.; MENU  
24 FOODS INC; DEL MONTE FOODS  
25 COMPANY; SUNSHINE MILLS, INC.;  
26 CHEMNUTRA, INC.; and DOES 1 through  
27 100, inclusive,

28 Defendants.

PETITION FOR REMOVAL OF  
ACTION PURSUANT TO 28 U.S.C.  
§1441

**TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

Defendant Del Monte Foods Company ("Del Monte") hereby files this petition for removal of the above-entitled action from the Eighth Judicial District Court of Nevada, Case No. A540315, to the United States District Court for the District of Nevada, and further states:

1. On April 30, 2007, plaintiff Margaret Picus ("Plaintiff") commenced suit against Del Monte in the Eighth Judicial District Court for the state of Nevada, by

1 filing an action entitled Picus v. Wal-Mart Stores, et al. Case No. A540315.

2 2. On May 7, 2007, copies of the Summons and Complaint in the above-  
3 entitled action were served upon this removing defendant.

4 3. True and correct copies of the Summons and Complaint constituting all  
5 of the papers and pleadings served upon Del Monte Foods Company and which are  
6 included in the court file are attached to the Affidavit of Dawn Grossman ("Grossman  
7 Aff.") and marked collectively as "Exhibit A".

#### 8 **JURISDICTIONAL BASIS FOR REMOVAL**

9 4. This Court has original jurisdiction over this action pursuant to the  
10 provisions of the Class Action Fairness Act (CAFA) 28 U.S.C. § 1332(d)(2), and the  
11 general removal statute, 28 U.S.C. § 1441(b). The complaint is styled as a nationwide  
12 class action to recover monies that were paid by consumers for multiple brands of pet  
13 food products that plaintiff alleges were improperly labeled "made in USA" when  
14 plaintiff alleges they were not. These pet food brands are alleged to have been sold at  
15 Wal-Mart stores throughout the nation. Grossman Aff., Exhibit "A".

16 5. This case is one of over 60 cases pending nationally arising out of the  
17 recent scandal concerning pet food that was allegedly contaminated with adulterated  
18 wheat gluten imported from the Peoples Republic of China. There is a hearing  
19 currently pending before the Judicial Panel on Multidistrict Litigation ("JPML")  
20 scheduled for May 31, 2007 in Las Vegas, Nevada. It is anticipated that at that time,  
21 all of the "pet food" cases will be consolidated and transferred to a single jurisdiction  
22 for all pre-trial proceedings. Attached to the Grossman Aff. as Exhibit "B" is a true  
23 and correct copy of hearing by the JPML.

24 6. All of the requirements for removal under CAFA exist in this case.  
25 Minimal diversity exists from the face of the complaint because it is alleged on pages  
26 6-7 that Plaintiff is a resident of Nevada and that defendant Wal-Mart Stores, is  
27 incorporated in Delaware and maintains its principal place of business in Arkansas.  
28 Furthermore, Menu Foods Inc., is incorporated in New Jersey with a its principal

1 place of business in Ontario, Canada; Del Monte Foods is incorporated in Delaware  
2 and maintains its principal place of business in San Francisco, California; and  
3 Sunshine Mills is incorporated in Delaware with its principal place of business in  
4 Alabama.

5 7. The allegations of the Complaint reveal that there are at least 100  
6 members of the plaintiff class because the complaint alleges that the multiple brands  
7 of dog food at issue were each sold by Wal-Mart in all 50 states.

8 8. That the combined claims of the plaintiff class exceed \$5,000,000 is also  
9 determinable from the face of the complaint. More specifically, paragraph 22 alleges  
10 that "it is impracticable to bring all members of the class before the Court. Plaintiff  
11 estimates that there are thousands of class members geographically spread throughout  
12 Nevada and millions of class members, geographically spread throughout the United  
13 States." Grossman Aff., Exhibit "A". Even assuming that each class member only  
14 purchased one container of the allegedly mislabeled pet food, CAFA's amount in  
15 controversy would be met.

16 9. These same allegations of paragraph 22 of plaintiff's Complaint also  
17 establish that this case does not fall within the "home state" exception to CAFA which  
18 requires that more than two thirds of the class members reside in the home state (in  
19 this case Nevada) or the "discretionary abstention" provision, which allows the federal  
20 court to abstain if at least one third of the class members reside in the state and the  
21 primary defendants are citizens of the state in which the action was filed. See 28  
22 U.S.C. 1332(d)(3) and (4). As stated, the plaintiff's Complaint itself states that  
23 whereas there are millions of class members across the country, only several  
24 thousands of these persons reside in Nevada.

25 10. On all of these bases, the action is removable under CAFA and 28 U.S.C.  
26 §1441(a).

27 11. This notice of removal is timely under the provisions of 28 U.S.C.  
28 §1446(b). The Complaint in this case was served on Del Monte on May 7, 2007

1 Grossman Aff. at para. 2 and thus the 30-day time limit in which to remove this case  
2 has not run.

3 12. This removing Defendant lacks knowledge of whether the other  
4 defendants have been served. A defendant who has been served need not seek out and  
5 notify codefendants who have not been served to ask them to join in the removal. [See  
6 *Gossmeier v. McDonald* (7<sup>th</sup> Cir. 1997) 128 F3d 481, 489]

7 13. The United States District Court for the District of Nevada embraces the  
8 county in which the state court action is now pending, and thus, this Court is a proper  
9 venue for this action pursuant to 28 U.S.C. § 84(c)(2).

10 14. Written notice of this removal is being served this date on counsel for  
11 Plaintiff pursuant to 28 U.S.C. § 1446(d).

12 15. A true and correct copy of this Notice of Removal is being filed this date  
13 with the Clerk of the Eighth Judicial District Court for the State of Nevada pursuant to  
14 28 U.S.C. § 1446(d).

15 WHEREFORE, Defendant Del Monte prays that the above-entitled action now  
16 pending be removed to the United States District Court for the District of Nevada, and  
17 prays that said action stand so removed.

18 DATED this 24<sup>th</sup> day of May, 2007 COZEN O'CONNOR

19  
20 By: Dawn J. Grossman  
21 Dawn J. Grossman  
22 Nevada Bar No. 6328  
23 COZEN O'CONNOR  
24 Suite 1610, 501 West Broadway  
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25 Designation For Service Only:  
26 Delanoy, Schuetze, McGaha & Provost  
27 601 South Rancho Drive, Suite C-20  
Las Vegas, NV 89106  
28 Attorneys for Defendant  
DEL MONTE FOODS COMPANY

**AFFIDAVIT OF DAWN GROSSMAN**

I, Dawn Grossman, declare and say as follows:

1. I am a partner in the law firm of Cozen O'Connor, attorneys for defendant Del Monte Foods Company. I have personal knowledge of the following facts and if called to testify thereto, I could and would do so competently.

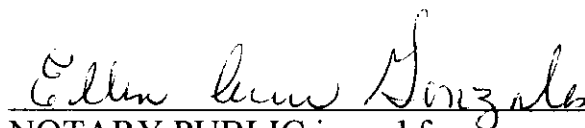
2. Attached hereto as Exhibit "A" is a true and correct copy of the Summons and Complaint that was served on Del Monte Foods Company on May 7, 2007. These documents represent all of the documents filed to date in the state court file.

3. Attached hereto as Exhibit "B" is a true and correct copy of the notice of hearing by the JPML.

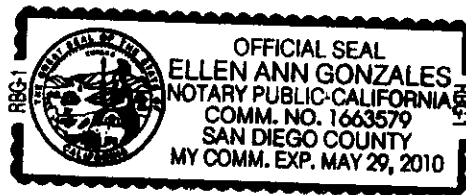
I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in San Diego, California, on May 24, 2007.

  
DAWN J. GROSSMAN

Subscribed and Sworn to before me  
on this 24<sup>th</sup> day of May, 2007.

  
NOTARY PUBLIC in and for  
Said County and State

My Commission Expires: 5/29/10



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Cozen O'Connor, and that on this 24<sup>th</sup> day of May, 2007, I served a true and correct copy of the foregoing PETITION FOR REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §1441 as follows:


( X ) by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

( ) to be hand-delivered to the attorneys listed below at the address indicated below:

Robert B. Gerard, Esq.  
Lawrence T. Osuch, Esq.  
GERARD & OSUCH, LLP  
2840 South Jones Boulevard  
Building D, Suite 4  
Las Vegas, Nevada 89146  
Telephone: (702) 251-0093  
Facsimile: (702) 251-0094

Norman Blumenthal, Esq.  
BLUMENTHAL & NORDREHAUG  
2255 Calle Clara  
La Jolla, California 92037  
Telephone: (858) 551-1223  
Facsimile: (858) 551-1232  
Attorneys for Plaintiffs

NICHOLAS M. WIECZOREK  
**MORRIS POLICH & PURDY LLP**  
3980 Howard Hughes Parkway  
Suite 400  
Las Vegas, Nevada 89169  
Telephone: (702) 862-8300  
Facsimile: (702) 862-8400  
Attorney for Defendant  
CHEMNUTRA INC.

  
An Employee of Cozen O'Connor

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK**

MARGARET PICUS, an individual; on behalf of herself, and )  
on behalf of all others similarly situated, )

Plaintiffs, )

vs. )

WAL-MART STORES, INC.; MENU FOODS INC.; DEL )  
MONTE FOODS COMPANY; SUNSHINE MILLS, INC.; )  
CHEMNUTRA INC.; and DOES 1 through 100, Inclusive, )

Defendants. )

CASE NO:

DEPT NO:

1540315

XXIII

**SUMMONS**

**TO: DEL MONTE FOODS COMPANY  
One Market @ The Landmark  
San Francisco, CA 94105**

**c/o Registered Agent  
The Corporation Trust Company  
Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ  
THE INFORMATION BELOW.**

**TO THE DEFENDANTS:** A Civil Complaint has been filed by the Plaintiff against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

- a. File with the Clerk of the Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

- b. Serve a copy of your response upon the attorney whose name and address is shown below.

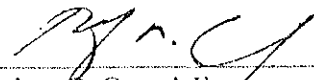
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.


3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an answer or other responsive pleading to the Complaint.

Issued at the direction of:

**SHIRLEY B. PARRAGUIRRE, CLERK OF COURT**

  
Robert B. Gerard, Esq.  
Nevada State Bar #005323  
Lawrence T. Osuch, Esq.  
Nevada State Bar #006771  
Jeremiah Pendleton, Esq.  
Nevada State Bar #009148  
GERARD & OSUCH, LLP  
2840 S. Jones Boulevard  
Building D, Suite #4  
Las Vegas, Nevada 89146  
Attorney for Plaintiffs

JULIE RICHMOND APR 30 2007  
DEPUTY CLERK  
Regional Justice Center  
200 Lewis Street  
Las Vegas, Nevada 89155  
Date: 



STATE OF NEVADA                     )  
  )  
COUNTY OF CLARK                 )                 ss.

**AFFIDAVIT OF SERVICE**

I, \_\_\_\_\_, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received \_\_\_\_\_ copy(ies) of the Summons and First Consolidated Complaint on the \_\_\_\_\_ day of \_\_\_\_\_, 2007 and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 2007 by:

**(affiant must complete the appropriate paragraph)**

1. delivering and leaving a copy with the defendant \_\_\_\_\_  
at (state address) \_\_\_\_\_

2. serving the defendant \_\_\_\_\_ by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the defendant's usual place of abode located at: \_\_\_\_\_.

(use paragraph 3 for service upon agent, completing A or B)

3. serving the defendant \_\_\_\_\_ by personally delivering and leaving a copy at the defendant's last known address which is:

a. with \_\_\_\_\_ as \_\_\_\_\_, as agent lawfully designated by statute to accept service of process;

b. with \_\_\_\_\_, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

\_\_\_\_\_ ordinary mail  
\_\_\_\_\_ certified mail, return receipt requested  
\_\_\_\_\_ registered mail, return receipt requested

addressed to the defendant.

\_\_\_\_\_  
Signature of person making service

SUBSCRIBED AND SWORN to before  
me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State

My commission expires: \_\_\_\_\_  
(SEAL)

**CT CORPORATION**  
A WoltersKluwer Company

**Service of Process  
Transmittal**

05/07/2007

Log Number 512198692

**TO:** Lolita Kumar  
Del Monte Corporation  
One Market Plaza  
San Francisco, CA, 94105

**RE: Process Served in Delaware**

**FOR:** Del Monte Foods Company (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Margaret Picus, an individual; on behalf of herself, and on behalf of all others similarly situated, Pltfs. vs. Wal-Mart Stores, Inc., et al. including Del Monte Foods Company, Dfts.

**DOCUMENT(S) SERVED:** Summons, Affidavit Form, Complaint, Jury Demand, Exhibit(s)

**COURT/AGENCY:** Clark County: District Court, NV  
Case # A540315

**NATURE OF ACTION:** Class action - False representations and/or designation as to the geographic origin of the Ol' Roy brand pet food products

**ON WHOM PROCESS WAS SERVED:** The Corporation Trust Company, Wilmington, DE

**DATE AND HOUR OF SERVICE:** By Messenger on 05/07/2007 at 15:26

**APPEARANCE OR ANSWER DUE:** Within 20 days exclusive of the date of service

**ATTORNEY(S) / SENDER(S):** Robert B. Gerard  
Gerard & Osuch, LLP  
2840 South Jones Blvd. D-4  
Las Vegas, NV, 89146  
702-251-0093

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Standard Overnight, 790241702255  
Email Notification, Katherine Manning katherine.manning@delmonte.com  
Email Notification, Lolita Kumar lolita.kumar@delmonte.com

**SIGNED:** The Corporation Trust Company  
**PER:** Scott LaScala  
**ADDRESS:** 1209 Orange Street  
Wilmington, DE, 19801  
**TELEPHONE:** 302-658-7581

Page 1 of 1 / JH

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of the package only, not of its contents.

1 **COM**

2 Robert B. Gerard, Esq.  
3 Nevada State Bar #005323  
4 Lawrence T. Osuch, Esq.  
5 Nevada State Bar #006771  
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16 La Jolla, California 92037  
17 Telephone: (858) 551-1223  
18 Facsimile: (858) 551-1232

19 Attorneys for Plaintiffs

20 **EIGHTH JUDICIAL DISTRICT COURT**  
21 **CLARK COUNTY, NEVADA**

22 MARGARET PICUS, an individual; on behalf  
23 of herself, and on behalf of all others similarly  
24 situated,

25 Plaintiffs,

26 vs.

27 WAL-MART STORES, INC.; MENU FOODS  
28 INC.; DEL MONTE FOODS COMPANY;  
INC.; SUNSHINE MILLS, INC.; CHEMNUTRA  
INC.; and DOES 1 through 100, Inclusive,  
Defendants.

CASE NO.:

A 540315

COMPLAINT

XXIII

(JURY DEMAND)

ARBITRATION EXEMPTION  
(CLASS ACTION)

FILED

APR 30 11 21 AM '07

CLERK OF THE COURT

**CLASS ACTION COMPLAINT**

COMES NOW, Plaintiff MARGARET PICUS ("Plaintiff"), individually and on behalf of all others similarly situated, brings this action as a class action against Defendants WAL-MART STORES, INC; MENU FOODS INC.; DEL MONTE FOODS COMPANY; SUNSHINE MILLS, INC.; CHEMNUTRA INC., and DOES 1 through 100, inclusive (hereinafter collectively referred to as "Defendants"), for violations of applicable consumer fraud statutes, for unjust enrichment, and for fraud by omission and concealment. Plaintiff alleges, based upon information and belief, except where otherwise stated, as follows:

**NATURE OF THE ACTION**

1. The instant Class Action Complaint involves a scheme among the Defendants through which Ol' Roy brand pet food products were expressly sold to consumers as "Made in USA," when in fact components of the Ol' Roy brand pet food products were made and/or manufactured in China. Plaintiffs seek restitution and/or damages for all consumers throughout the United States who purchased "Ol' Roy" brand pet food products which represent on the product label to have been "Made in USA" during the applicable Class Period. The Ol' Roy brand pet food products which are the subject of this suit are the following specific products:

- a. Pouch with Beef
- b. Pouch with Chicken
- c. Pouch with Filet Mignon
- d. Pouch with Chicken Teriyaki
- e. Pouch with Beef/Noodle/Vegetable
- f. Pouch with Lamb/Rice/Gravy
- g. Pouch with Stew
- h. Pouch with Turkey
- i. Can SI Beef
- j. Can SI Chicken
- k. Ol' Roy Beef Flavor Jerky Strips Dog Treats
- l. Ol' Roy County Stew Hearty Cuts in Gravy Dog Food
- m. Ol' Roy with Beef Hearty Cuts in Gravy Dog Food
- n. Ol' Roy with Beef Hearty Strips in Gravy Dog Food
- o. 4-Flavor Large Biscuits
- p. Peanut Butter Biscuits

In addition, there may be other Ol' Roy brand pet food products that were similarly labeled as "Made in USA" but contained components that were imported from outside of the United States.

1 Plaintiff will therefore amend to list any additional Ol' Roy brand pet food products which were  
2 sold as "Made in USA" but contained components that were imported from outside the United  
3 States as such additional Ol' Roy brand pet food products are identified through discovery.

4         2. Central to the Defendants' marketing of certain of their products is the  
5 representation and designation that such products were and are "Made in USA." Defendants  
6 package these products with the designation on the label or packaging, in capital and bold  
7 lettering, that the products were "MADE IN USA." Studies show that the "MADE IN USA" is a  
8 substantial factor in consumer purchasing decisions. Moreover, in the context of food products,  
9 the designation that the products were "Made in USA" becomes a central and primary concern  
10 because of concerns about the health and safety of the pet and the differences in health and safety  
11 procedures in foreign countries.

12         3. At all relevant times, Defendant Wal-Mart Stores, Inc. operated a nationwide  
13 chain of retail stores selling a wide variety of consumer goods including pet food products under  
14 the brand name "Ol' Roy" after the famous Wal-Mart founder Sam Walton's bird dog, Ol' Roy.  
15 Defendant Wal-Mart Stores, Inc. operated these retail stores in Nevada and sold pet food  
16 products under the brand name "Ol' Roy" to consumers in Nevada and throughout the United  
17 States

18         4. All of the pet food products under the brand name "Ol' Roy" sold to consumers in  
19 Nevada and nationwide have substantially the same product label. On each package of Ol' Roy  
20 pet food, the label uniformly represents that the product was "MADE IN USA" in capital letters.  
21 A true and correct exemplar copy of an Ol' Roy pet food label attached hereto as Exhibit #1,  
22 evidencing the uniform representations regarding geographic origin of the product. All of the Ol'  
23 Roy pet food sold by Wal-Mart Stores, Inc. contains identical or substantively similar  
24 representations as to the geographic origin of the product being "Made in USA."

25         5. At all relevant times, Ol' Roy brand pet foods were not "Made in USA" as falsely  
26 advertised, but instead, were manufactured either in whole or in part, in China. On or after  
27 March 16, 2007, as a result of the FDA investigation into these products, Defendants disclosed  
28 for the first time that the Ol' Roy brand pet food products contained ingredients manufactured in

1 China.

2         6. At all relevant times, Defendants WAL-MART STORES, INC. ("Wal-Mart")  
3 MENU FOODS INC. ("Menu"), DEL MONTE FOODS COMPANY ("Del Monte"), and  
4 SUNSHINE MILLS, INC. ("Sunshine") were companies that each participated in the  
5 manufacture and/or distribution of an Ol' Roy brand pet food product and were responsible in  
6 some part, for the misrepresentation that the Ol' Roy product was "Made in USA." Wal-Mart,  
7 Menu, Del Monte and Sunshine each participated in the packaging or labeling of different Ol'  
8 Roy brand pet food products, each with the fraudulent representation of geographic origin. Wal-  
9 Mart, Menu, Del Monte and Sunshine each knew or exercised conscious disregard for the truth  
10 that Ol' Roy brand pet food products were not "Made in USA," but instead, were manufactured  
11 either in whole or in part, in China. Despite this knowledge, they nevertheless participated with  
12 Wal-Mart in the fraudulent labeling of Ol' Roy pet food products as "Made in USA." Wal-Mart,  
13 Menu, Del Monte and Sunshine each knew that the fraudulent labeling of Ol' Roy brand pet food  
14 products as "Made in USA" would be reasonably relied upon by end consumers. Despite this  
15 knowledge, they nevertheless participated in fraudulent labeling of Ol' Roy brand pet food  
16 products, distributing Ol' Roy products to Wal-Mart for the intended purpose of sales to the  
17 consumers in Nevada and nationwide, without any reasonable grounds to believe that the  
18 products were "Made in USA."

19         7. At all relevant times, Defendant CHEMNUTRA INC. ("Chemnutra") is the  
20 company responsible, whole or in part, for importing the manufactured wheat gluten ingredient  
21 in Ol' Roy brand pet food products from China and supplying the same for use in the Ol' Roy  
22 brand pet food products. The Chinese product imported by CHEMNUTRA was actually used in  
23 the Ol' Roy brand pet food products. Although importing the manufactured wheat gluten  
24 ingredient from China, CHEMNUTRA nevertheless participated in the scheme and practice of  
25 labeling the Ol' Roy brand pet food products as "Made in USA" and/or were responsible for the  
26 mislabeling of the Ol' Roy brand pet food products as "Made in USA."

27         8. Under the federal regulations established by the Federal Trade Commission, for a  
28 product to be called "Made in USA," the product must be "all or virtually all" made in the U.S.

1 The term "United States," includes the 50 states, the District of Columbia, and the U.S. territories  
2 and possessions. Under this standard, "All or virtually all" means that "all significant parts and  
3 processing that go into the product must be of U.S. origin. That is, the product should contain no  
4 — or negligible — foreign content." See Federal Trade Commission Statement "Complying with  
5 the Made In the USA Standard."

6 9. The Ol' Roy brand pet food products that were imported, manufactured and sold  
7 by Defendants were comprised of components that were manufactured outside of the United  
8 States, including but not limited to China. At all relevant times prior to March 16, 2007,  
9 Defendants failed to disclose and concealed the fact that Ol' Roy brand pet food products  
10 contained ingredients or components that were manufactured and/or made in China and failed to  
11 exercise the necessary skill and care required to determine the accuracy of this statement.

12 10. Contrary to Defendants' packaging of Ol' Roy brand pet food products, (a) the Ol'  
13 Roy products contain certain components that have been entirely or substantially made,  
14 manufactured or produced outside of the United States, and (b) not all, or virtually all, of each  
15 Ol' Roy product is "Made in USA." Defendants have fraudulently concealed the material facts at  
16 issue herein by failing to disclose to the general public the true facts regarding the country of  
17 origin designation appearing on the Ol' Roy brand pet food products. The disclosure of this  
18 information was necessary in order to make the Defendants' representations regarding product  
19 origin not misleading. Defendants possess superior knowledge of the true facts, including  
20 knowledge that certain components were imported under a "Made in China" designation, which  
21 was not disclosed and which was necessary to discover the wrongful conduct, thereby tolling the  
22 running of any applicable statute of limitation.

23 11. Consumers and users of these products are particularly vulnerable to these  
24 deceptive and fraudulent practices. Defendants were in the exclusive possession of information  
25 regarding the country of origin for Ol' Roy brand pet food products. Most consumers possess  
26 very limited knowledge of the likelihood that products claimed to be "Made in USA" are in fact  
27 made, in whole or in part, in foreign countries. This is a material factor in many people's  
28 purchasing decisions, as they believe they are buying truly American products and supporting

1 American companies and American jobs. Consumers generally believe that "Made in USA"  
2 products are higher quality products than those of other countries. Unaware of the falsity of the  
3 Defendants' country-of-origin claims, Plaintiff and the other members of the Class were  
4 fraudulently induced to purchase Ol' Roy brand pet food products under false pretenses and at  
5 premium prices. State and federal laws are uniformly designed to protect consumers from this  
6 type of false advertising and predatory conduct. Defendants' deception of consumers is ongoing  
7 and will victimize consumers every day until it is altered by judicial intervention.

8 12. The country-of-origin designation is especially important and material in the  
9 context of food products because of the protections afforded by the Food and Drug  
10 Administration, and local health agencies, over food products made in the United States. For  
11 example, food products made in foreign countries can be grown or made using banned pesticides  
12 and/or chemicals, which one would not expect to find in Made in USA food products.  
13 Consumers who purchase food products designated with the "Made in USA" reasonably believe  
14 that they are purchasing product which has been grown and made in accordance with state and  
15 federal regulations. These same regulations are not present in foreign countries where unsafe and  
16 deleterious chemicals may be used without regulatory oversight. This concern is evidenced by  
17 the 2007 recall of many Ol' Roy brand pet food products, which was ordered because of the  
18 presence of chemicals which were illegal for use in food in the United States. This would not  
19 have occurred if the products were in fact "Made in USA" as represented.

#### 20 21 THE PARTIES

22 13. The Plaintiff MARGARET PICUS is, and at all time mentioned herein was, a  
23 resident of Nevada, who purchased Ol' Roy brand pet food products at a Wal-Mart retail store  
24 located in Henderson, Nevada during the Class Period. The Plaintiff purchased Ol' Roy brand  
25 pet food products as a consumer for the household purpose of feeding the product to her beloved  
26 pet.

27 14. Defendant WAL-MART STORES, INC. is and at all times mentioned herein was,  
28



1 a corporation organized under the laws of Delaware, authorized to conduct business in Nevada,  
2 and has a principal place of business in Arkansas. At all relevant times, Wal-Mart conducted and  
3 conducts substantial business in the State of Nevada and substantially availed and avails itself of  
4 the consumer pet food market in Nevada and the United States.

5 15. Defendant MENU FOODS INC. is and at all times mentioned herein was, a  
6 corporation organized under the laws of New Jersey with a principal place of business in Ontario,  
7 Canada. At all relevant times, Menu conducted and conducts substantial business in the State of  
8 Nevada and substantially availed and avails itself of the consumer pet food market in Nevada and  
9 the United States.

10 16. DEL MONTE FOODS COMPANY is and at all times mentioned herein was, a  
11 corporation organized under the laws of Delaware with a principal place of business in San  
12 Francisco, California. At all relevant times, Del Monte conducted and conducts substantial  
13 business in the State of Nevada and substantially availed and avails itself of the consumer pet  
14 food market in Nevada and the United States.

15 17. SUNSHINE MILLS, INC. is and at all times mentioned herein was, a corporation  
16 organized under the laws of Delaware with a principal place of business in Alabama. At all  
17 relevant times, Sunshine conducted and conducts substantial business in the State of Nevada and  
18 substantially availed and avails itself of the consumer pet food market in Nevada and the United  
19 States.

20 18. CHEMNUTRA INC. is and at all times mentioned herein was, a corporation  
21 residing in and with a principal place of business in Nevada. At all relevant times, Chemnutra  
22 conducted and conducts substantial business in the State of Nevada and substantially availed and  
23 avails itself of the consumer pet food market in Nevada and the United States.

24 19. Plaintiffs are ignorant of the true names and capacities of the Defendants sued  
25 herein as DOES 1 through 100, inclusive, and therefore sued these Defendants by fictitious  
26 names. Plaintiffs will amend further this Class Action Complaint to allege the true names and  
27 capacities of these Defendants if and when they are ascertained. Each of these Defendants, sued  
28 by the fictitious DOE designation, was in some manner responsible for the acts, omissions,

misrepresentations, non-disclosures, breach of warranties, fraud, unjust enrichment, deceptive business practices, violation of statutes, aiding and abetting the scheme, and other wrongdoing as alleged herein, all of which directly and proximately caused damage to Plaintiffs. Plaintiffs are further informed and believe that said Defendants, some of them, each of them and/or all or them were the knowing and willful participants in a scheme to promote, market, sell, advertise, or otherwise benefit from the sale of mislabeled Ol' Roy brand pet food products.

### **JURISDICTION AND VENUE**

20. This Court has jurisdiction over this action, and venue is proper in Clark County, Nevada, because (1) the Plaintiff's purchases of Ol' Roy brand pet food products occurred in Clark County, (2) the Plaintiff resides in Clark County, (3) sale of Ol' Roy brand pet food products to members of the Class occurred in Clark County, (4) Chemnutra is located in Las Vegas, Nevada, and (5) the deceptive trade practices that give rise to this claim emanated from and occurred, in whole or in part, in Nevada.

### **CLASS ALLEGATIONS**

21. Plaintiff brings this action pursuant to Rule 23 of the Nevada Rules of Civil Procedure as a nationwide class action on her own and on behalf of a class defined as:

ALL INDIVIDUALS IN THE UNITED STATES WHO PURCHASED ONE OR MORE OL' ROY BRAND PET FOOD PRODUCTS PRIOR TO MARCH 16, 2007

The OL' ROY BRAND PET FOOD PRODUCTS which are the subject of this suit are the following specific products:

- a. Pouch with Beef
- b. Pouch with Chicken
- c. Pouch with Filet Mignon
- d. Pouch with Chicken Teriyaki
- e. Pouch with Beef/Noodle/Vegetable
- f. Pouch with Lamb/Rice/Gravy
- g. Pouch with Stew
- h. Pouch with Turkey
- i. Can SI Beef
- j. Can SI Chicken
- k. Ol' Roy Beef Flavor Jerky Strips Dog Treats
- l. Ol' Roy County Stew Hearty Cuts in Gravy Dog Food
- m. Ol' Roy with Beef Hearty Cuts in Gravy Dog Food

- n. Ol' Roy with Beef Hearty Strips in Gravy Dog Food
- o. 4-Flavor Large Biscuits
- p. Peanut Butter Biscuits

In addition, other Ol' Roy brand pet food products may also have been similarly labeled as "Made in USA" but contained components that were imported from outside of the United States. Plaintiff will therefore amend to list any additional Ol' Roy brand pet food products which were sold as "Made in USA" but contained components that were imported from outside the United States as such additional Ol' Roy brand pet food products are identified through discovery. Excluded from the Class are Defendants, any parent, subsidiary or affiliate of Defendants, and their officers, directors, and employees of Defendants, and any judicial officer who may preside over this cause of action.

22. The requirements for maintaining this action as a class action are satisfied in that:

- a. It is impracticable to bring all members of the Class before the Court.

Plaintiff estimates that there are thousands of Class Members geographically spread throughout Nevada and that there are millions of Class Members, geographically spread throughout the United States. Attempting to join and name each Class member as a Co-Plaintiff would be unreasonable and impracticable.

- b. There are questions of law and fact common to the Class, which are identical for each member of the Class and which predominate over the questions affecting the individual Class members, if any. Among these common questions of law and fact are:

- (i) Whether Defendants made deceptive representations or designations of geographic origin in connection with Ol' Roy brand pet food products;
- (i) Whether the representations or designations of geographic origin in connection with Ol' Roy brand pet food products violated 15 U.S.C. §45a;
- (ii) Whether Ol' Roy brand pet food products were represented on the package labeling to have been "MADE IN USA";

- (iii) Whether all, or virtually all, of the Ol' Roy brand pet food products were "Made in USA"; ;
- (iv) Whether Defendants were unjustly enriched through the distribution and/or sale of Ol' Roy brand pet food products as "Made in USA";
- (v) Whether Defendants concealed the true origin of Ol' Roy brand pet food products and omitted the fact that Ol' Roy brand pet food products contained components that were manufactured and made, in whole or in part, outside the United States;
- (vi) Whether Defendants participated in the alleged mislabeling of Ol' Roy brand pet food products as "Made in USA";
- (vii) Whether Defendants knew or should have known that Ol' Roy brand pet food products contained components that were manufactured and made, in whole or in part, outside the United States;
- (viii) Whether the members of the Class sustained damage as a result of the Defendants' conduct;
- (ix) Whether the Defendants unfairly or unlawfully received and/or retained revenue acquired through the scheme alleged herein;
- (x) Whether the Defendants engaged in a uniform corporate policy of marketing Ol' Roy brand pet food products as "Made in USA";
- (xi) Whether the applicable statute of limitations was tolled by virtue of Defendant's concealment and fraud;
- (xii) Whether the Defendants committed fraud in the marketing, distribution and/or sale of Ol' Roy brand pet food products and whether Defendants participated in such fraud.

c. The claims of the representative Plaintiff are typical of the claims of the

1 Class in that the Plaintiff purchased Ol' Roy brand pet food products prior to March 16, 2007.  
2 The claims of both the named Plaintiff and the claims of all other Class members result from  
3 Defendants' actions in marketing and/or labeling Ol' Roy brand pet food products as "Made in  
4 USA" which were in fact made, manufactured or produced with certain components made  
5 outside of the United States.

6 d. The claims of the representative Plaintiff will fairly and adequately protect  
7 the interests of the Class. The Class interests are coincident with, and not antagonistic to, those  
8 of the Plaintiff. Furthermore, Plaintiff has retained and is represented by experienced class action  
9 counsel.

10 23. In this action, Plaintiff and the Class seek all relief authorized under Nevada law  
11 for which class-wide relief is available, disgorgement, restitution and reasonable attorneys' fees  
12 and costs incurred in the prosecution of this action. There are no manageability problems due to  
13 variations in state laws or choice of law provisions, because the representations of "Made in  
14 USA" were uniform and systematic and the laws of the United States and of all 50 states prohibit  
15 and make unlawful the designation of "Made in USA" on a product that is not made in the  
16 U.S.A. Further, the deceptive or false designation of geographic origin is actionable in all 50  
17 states, and there are no relevant variations in the law of the states which impact the claims  
18 asserted herein. The performance of applicable choice of law or conflict of law analysis does not  
19 render the class unmanageable, moreover, any manageability issue which may arise can be  
20 handled through the use of a subclass.

21 24. A class action is superior to any other available methods for the fair and efficient  
22 adjudication of this controversy. The amount of each individual claim is too small to warrant  
23 individual litigation. Even if any group of class members itself could afford individual litigation,  
24 such a multitude of individual litigation would be unduly burdensome to the courts in which the  
25 individual litigation would proceed. The class action device is preferable to individual litigation  
26 because it provides the benefits of unitary adjudication, economies of scale, and comprehensive  
27 adjudication by a single court. Finally, class wide litigation will insure that wrong doers do not  
28 retain the ill-gotten gains acquired through their wrongful conduct.



1           29.     The Defendants violated their statutory duty by working in concert and each  
2 participating in an elaborate scheme wherein Defendants deliberately mislabeled products or  
3 caused products to be mislabeled as to their geographic origin for the purpose of deceiving  
4 consumers, increasing sales and reducing costs. Defendants also acted deceptively and unfairly  
5 because all of the Ol' Roy brand pet food products had the deceptive appearance of a product that  
6 was made in the USA.

7           30.     The Defendants violated their duty under the aforementioned statutes, including  
8 but not limited to, N.R.S § 598.0915 (4), by, among other things, making false representations  
9 and/or designations as to the geographic origin of the Ol' Roy brand pet food products. This  
10 conduct violates Nevada law, and the law of every other state, including but not limited to  
11 California (Cal. Civil Code §1770(a)(4)), Arkansas (Ark. Stat. Ann. §4-88-107(a)(1)), Alabama  
12 (Code of Ala. §8-19-5(4)), and Delaware (6 Del. C. §2532), all of which laws are identical in  
13 prohibiting deceptive representations or designations of geographic origin in the marketing and  
14 sales of goods.

15           31.     The Defendants' actions as alleged herein were unfair and deceptive and  
16 constituted fraud, misrepresentation and the concealment, suppression and omission of material  
17 facts with the intent that Plaintiff and the Class would rely upon the fraudulent misrepresentation,  
18 concealment, suppression and omission of such material facts, all in violation of the applicable  
19 Consumer Fraud and Deceptive Business Practices Acts.

20           32.     Each Ol' Roy brand pet food product represented to the Plaintiff and every other  
21 member of the Class, at the time of purchase, that the Ol' Roy brand pet food product was  
22 "MADE IN USA" without qualification. Contrary to such representation, each Ol' Roy brand  
23 pet food product purchased by the Plaintiff and by every other member of the Class uniformly  
24 contained component(s) that were made and/or manufactured outside of the United States.

25           33.     These representations were made by Defendants to Plaintiff and the Class in  
26 writing on the label of each Ol' Roy brand pet food product purchased by the Plaintiff and by  
27 every other member of the Class, at the time of their respective purchases. Because the true facts  
28 concerning the use component(s) that were made and/or manufactured outside of the United



1 States were concealed by Defendants and never disclosed until after March 16, 2007, the true  
2 facts concerning the geographic origin of the products were not and could not have been known  
3 to Plaintiff or any other member of the Class.

4 34. When making the representations on the label that the products were "Made in  
5 USA", the Defendants intended that the representations be relied upon by all consumers in  
6 making their purchase.

7 35. All other states have consumer fraud statutes which are substantially similar to the  
8 Nevada Consumer Fraud Act. To the extent that the Nevada Consumer Fraud Act may be found  
9 not to protect the residents of other states, the consumer fraud acts of the Defendants' forum state  
10 could be applied to all members of the Class.

11 36. Plaintiff was injured by the many violations of the Nevada Consumer Fraud Act,  
12 and parallel sister state statutes, and Plaintiff has thereby been damaged in an amount to be  
13 proven at trial. As a direct and proximate result of the acts and practices alleged above, members  
14 of the general public who purchased the subject Ol' Roy brand pet food products from  
15 Defendants, including the Plaintiff, lost monies in a sum currently unknown but subject to proof  
16 at the time of trial. This Court is empowered to, and should, order restitution to all persons from  
17 whom Defendants deceptively, unfairly and/or unlawfully took money in order to accomplish  
18 complete justice.

19  
20 **COUNT II**

21 **FRAUD-INTENTIONAL NON-DISCLOSURE OF MATERIAL FACTS**

22 **(Against All Defendants)**

23 37. Plaintiff repeats, incorporates by reference and realleges the allegations contained in  
24 Paragraphs 1-36, above as if fully set forth herein.

25 38. The Defendants, working in concert under the above-described elaborate, fraudulent  
26 scheme, intentionally concealed and failed to disclose material facts about Ol' Roy brand pet food  
27 products and the true facts that should have been made known to the public and the Plaintiff Class  
28 prior to their purchase of Ol' Roy brand pet food product. In particular, the Defendants failed to



1 disclose the material facts alleged herein above with regard to the true geographic origin of important  
2 and substantial component(s) of Ol' Roy brand pet food products. By way of further information,  
3 Plaintiff further allege as follows:

4 **Defendants:**

5 39. The Defendants participation in the fraudulent scheme is set forth as follows:

6 a. Who: The Defendants each participated in the labeling of Ol' Roy brand pet  
7 food products as "Made in the USA" when they each knew that the Ol' Roy brand pet food products  
8 were not made in USA and contained important and substantial component(s) that were made and/or  
9 manufactured outside of the United States.

10 b. When: The Ol' Roy brand pet food products deceptively represented their  
11 geographic origin as herein alleged at all times prior to March 16, 2007, when the true origin of these  
12 products were disclosed for the first time as a result of an investigation by the Food and Drug  
13 Administration.

14 c. Where: On the label and/or packaging of the Ol' Roy brand pet food products  
15 sold in Nevada and throughout the United States.

16 d. Nature of Fraud: This was a fraud as to the geographic origin where "Made  
17 in USA" designation was used on each package to give the appearance that the product was made  
18 in the USA, by United States workers and farmers, and under the protection of United States laws,  
19 when in fact, the Defendants knew or should have known the Ol' Roy brand pet food products were  
20 comprised of component(s) that were made and/or manufactured outside of the United States. In  
21 fact, Chemnutra admitted in its recall notices that the component(s) of Ol' Roy brand pet food  
22 products were originally labeled as "Made in China", which designation apparently was changed  
23 and/or altered by Defendants before sale to consumers.

24 e. How and When Were Material Facts Concealed From The Plaintiffs:  
25 Defendants failed to disclose and concealed the true geographic origin of component(s) of the Ol'  
26 Roy brand pet food products.

27 40. These non-disclosures of material fact were made intentionally in order to deceive  
28 the Plaintiff and the other Class members, to induce their reliance, and in order to enrich the

1 Defendants by using sub-standard foreign components and passing such components off to the public  
2 as "MADE IN USA." Said non-disclosures were made for the purpose of facilitating and/or aiding  
3 and abetting the scheme to market and sell these products to the public using deceptive  
4 representations of geographic origin.

5 41. If Plaintiff and the other members of the Class had known of the facts which  
6 Defendants and each of them failed to disclose, they would never have purchased the Ol' Roy brand  
7 pet food products as they did.

8 42. Defendants' non-disclosures of material facts have caused damage to Plaintiff and  
9 the other members of the Class.

10  
11 **COUNT III**

12 **Unjust Enrichment**

13 **(Against All Defendants)**

14 43. Plaintiff repeats, incorporates by reference and realleges the allegations contained in  
15 Paragraphs 1-42 above as if fully set forth herein.

16 44. By labeling products as "Made in USA", Defendants represented that the subject  
17 "Made in USA" products have the characteristic of being made in America and the benefits of  
18 American-made products, which they do not have. Defendants have represented that the subject  
19 "Made in USA" products have the status of American-made products and the affiliation and  
20 connection with America, which they do not have. Moreover, Defendants have represented that the  
21 subject "Made in USA" products have the standard, quality, and grade of American-made products,  
22 which is not true. This "Made in USA" designation is a material and substantial factor in  
23 consumers' purchasing decisions, because consumers believe they are buying truly American  
24 products and supporting American companies and American jobs. Consumers generally believe that  
25 "Made in USA" products are higher quality products than those of other countries. Further, this  
26 "Made in USA" designation is especially important with respect to food products, because only  
27 through the Made in the USA designation can consumers insure that the products were not produced  
28 using illegal or banned chemicals or pesticides. This concern is evidenced by the recall of Ol' Roy

1 brand pet food products which was ordered because the products were found to contain substances  
2 which are not approved for use in food products in the United States, and the reason they contained  
3 such deleterious chemicals is because component(s) of the subject products were not made and/or  
4 manufactured in the United States, but instead were imported from countries with no such health  
5 protections.

6 45. In reality, the Ol' Roy brand pet food products were not made of all or substantially  
7 all American-made products. In particular, component(s) of the products were imported from outside  
8 the United States, including but not limited to wheat gluten imported from China. In the example  
9 of the wheat gluten from China, such components were imported as "Made in China" however, the  
10 Defendants changed and/or altered such designation to falsely state "Made in USA."

11 46. Defendants have benefitted and been enriched by the above-alleged conduct.  
12 Defendants sold the Ol' Roy brand pet food products with the false designation that the Ol' Roy  
13 brand pet food products were "Made in USA" and thereby unjustly reaped benefits and profits from  
14 consumers and the Class as a result of these representations. Defendants received and continues to  
15 receive sale benefits and profits at the expense of Plaintiff and the Class using such deceptive  
16 representation and designations.

17 47. Defendants used the aforementioned representations to induce Plaintiff and the other  
18 members of the Class to purchase the Ol' Roy brand pet food products. Accordingly, Defendants  
19 received benefits which they have unjustly retained at the expense of Plaintiff and the Class  
20 members. Defendants have knowledge of this benefit, voluntarily accepted such benefit, and  
21 retained the benefit. Plaintiff, and other consumers similarly situated, did not receive the benefits  
22 of American-made products and the added health protection flowing from such products, for which  
23 they bargained and paid a premium price. As a direct and proximate result of this conduct, Plaintiff  
24 and the other members of the Class were deprived of the benefits and money they expended which  
25 were improperly retained by Defendants, and are therefore entitled to restitution in an amount  
26 equivalent to the value of the benefit.

27 48. As a direct and proximate result of the Defendants conduct and unjust enrichment,  
28

1 Plaintiff and the Class Members have suffered injury and seek relief in an amount necessary to  
2 restore them to the positions they would be in had Defendants not been unjustly enriched.

3  
4 **REQUEST AND PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs respectfully request that the Court enter judgment in their favor  
6 and against Defendants as follows:

- 7 1. Certify this action as a class action;
- 8 2. Award damages and/or restitution in an amount to be proven at trial;
- 9 3. Order declaratory relief finding that Defendants have engaged in deceptive trade practices  
10 or practices in violation of federal and state law.
- 11 4. Order injunctive relief enjoining Defendants and their officers, directors, agents,  
12 distributors, servants, employees, attorneys, and all others in active concert or participation with  
13 Defendants, or any of them, jointly and severally, during the pendency of this action and permanently  
14 thereafter from falsely representing the origin of the products;
- 15 5. Award pre-judgment and post-judgment interest at the maximum rate allowed by law and  
16 costs of suit;
- 17 6. Award Plaintiff attorneys' fees and all litigation expenses as allowable by law.  
18 Alternatively, for all attorneys' fees and all litigation expenses to be awarded pursuant to the  
19 substantial benefit doctrine or other authority requiring Defendants to pay Plaintiff's attorneys' fees  
20 and litigation expenses. Alternatively, for attorneys' fees and other litigation expenses to be paid  
21 under the common fund doctrine or any other provision of law; and
- 22 7. Order such other and further relief as the Court may deem just and proper.

23 //

24 //

25 //

26 //

27 //

28 //

1 DATED this the 50 day of April, 2007.

2 GERARD & OSUCH, LLP

3 By: 

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19 *Attorneys For The Plaintiffs*  
20  
21  
22  
23  
24  
25  
26  
27  
28


**DEMAND FOR JURY TRIAL**

PLAINTIFFS demand jury trial on issues triable to a jury.

Dated: April 30, 2007  
49.

GERARD & OSUCH, LLP

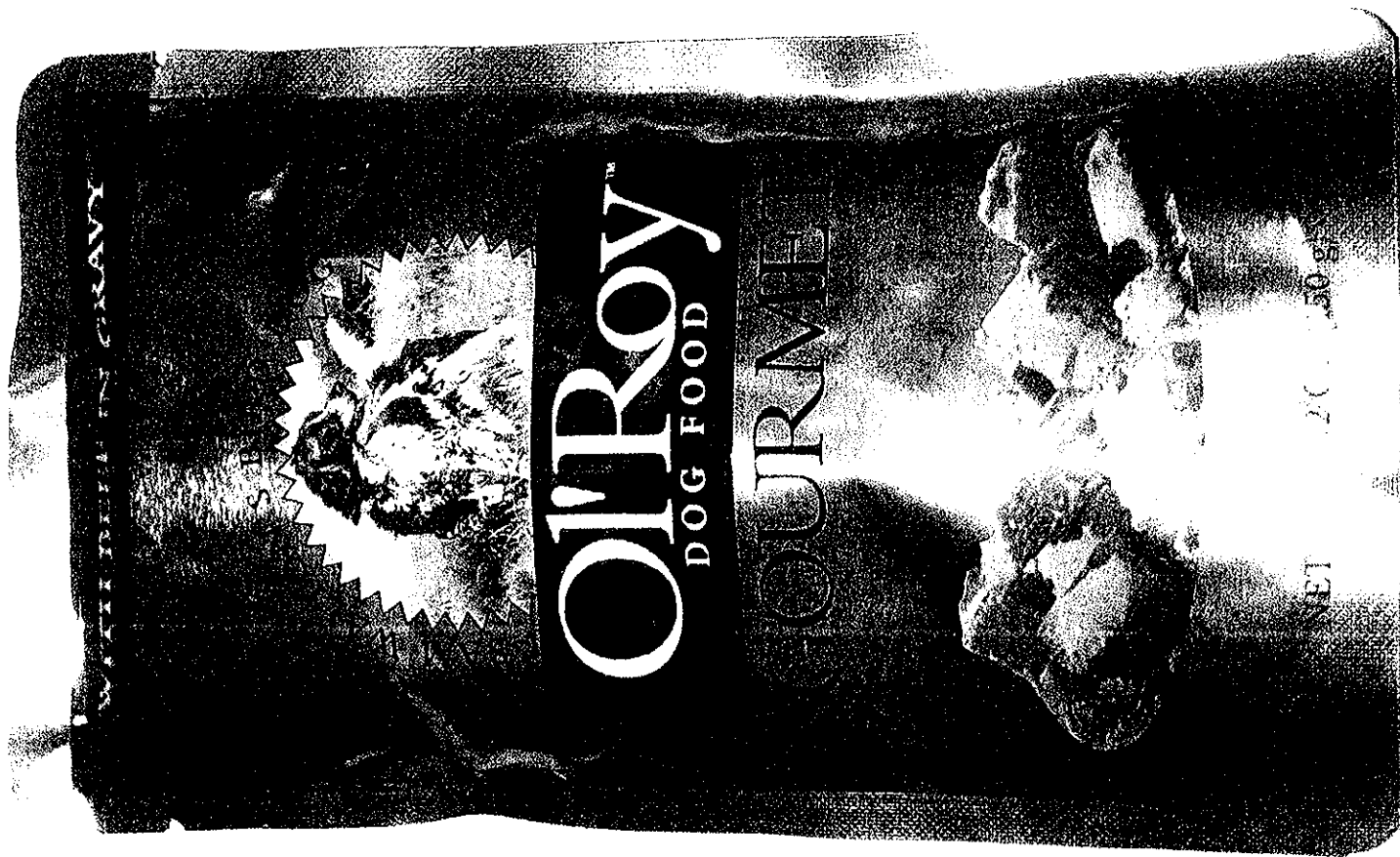
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***Attorneys For The Plaintiffs***

## **EXHIBIT #1**





**OLROY™**  
DOG FOOD

**WITH BEEF IN GRAVY**

Water and fat are the most important ingredients in this food. The fat is a blend of animal and vegetable oils. The animal oils are from chicken, beef, and salmon. The vegetable oils are from corn, soybean, and cottonseed. The animal oils are rich in essential fatty acids, which help to keep your dog's skin and coat healthy. The vegetable oils are rich in vitamins and minerals, which help to keep your dog's body healthy.

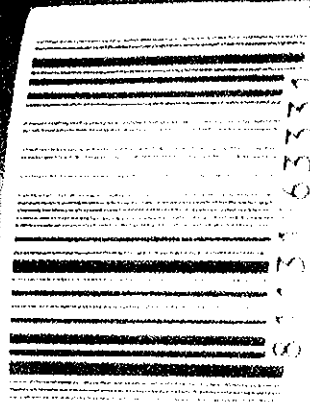
With Beef in Gravy, Olroy Dog Food provides the nutrition your dog needs to stay healthy and happy. It's the only dog food that's made with real beef and real gravy. It's the only dog food that's made with real ingredients. It's the only dog food that's made with real love.

**INSTRUCTIONS**  
Feed 1/2 cup to 1 cup per day, depending on your dog's weight. Feed at room temperature. Always provide access to clean, fresh water.

Feed as much as your dog needs. 3 or 4

**COMMENTS**

8/2/38  
JPM F



MADE IN  
RESTON, VA  
WAL-MART STORE  
8/2/38



**UNITED STATES OF AMERICA  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**CHAIRMAN:**  
Judge Wm. Terrell Hodges  
United States District Court  
Middle District of Florida

**MEMBERS:**  
Judge D. Lowell Jensen  
United States District Court  
Northern District of California

Judge J. Frederick Motz  
United States District Court  
District of Maryland

Judge Robert L. Miller, Jr.  
United States District Court  
Northern District of Indiana

Judge Kathryn H. Vratil  
United States District Court  
District of Kansas

Judge David R. Hansen  
United States Court of Appeals  
Eighth Circuit

Judge Anthony J. Scirica  
United States Court of Appeals  
Third Circuit

**DIRECT REPLY TO:**

Jeffery N. Lüthi  
Clerk of the Panel  
One Columbus Circle, NE  
Thurgood Marshall Federal  
Judiciary Building  
Room G-255, North Lobby  
Washington, D.C. 20002

Telephone: [202] 502-2800  
Fax: [202] 502-2888

<http://www.jpml.uscourts.gov>

April 12, 2007

**NOTICE OF HEARING SESSION**

Dear Counsel:

Pursuant to the order of the Judicial Panel on Multidistrict Litigation filed today, you are hereby notified that a hearing session has been scheduled to consider various matters pursuant to 28 U.S.C. § 1407.

**DATE OF HEARING SESSION:** May 31, 2007


**LOCATION OF HEARING SESSION:** Lloyd D. George United States Courthouse  
Courtroom 7C, 7th Floor  
333 Las Vegas Boulevard South  
Las Vegas, Nevada 89101

**TIME OF HEARING SESSION:** In those matters designated for oral argument, counsel presenting oral argument must be present at **8:30 a.m.** in order for the Panel to allocate the amount of time for oral argument. Oral argument will commence at **9:30 a.m.**

Please direct your attention to the enclosed Hearing Session Order and Schedule of Matters for Hearing Session for a listing of the matters scheduled for consideration at this hearing session.

- Section A of this Schedule lists the matters designated for oral argument.
- Section B of this Schedule lists the matters that the Panel has determined to consider **without oral argument**, pursuant to Rule 16.1(c), R.P.J.P.M.L., 199 F.R.D. 425, 439 (2001).

For those matters listed on Section A of the Schedule, the enclosed blue "Notice of Presentation or Waiver of Oral Argument" must be returned to this office no later than **May 14, 2007**. Note the procedures governing Panel oral argument which are outlined on the enclosed "Procedures for Oral Argument before the Judicial Panel on Multidistrict Litigation." These procedures are strictly adhered to and your cooperation is appreciated.

Very truly,  
  
Jeffery N. Lüthi  
Clerk of the Panel

c: Clerk, U.S. District Court for the District of Nevada

JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION  
FILED

APRIL 12, 2007

JEFFERY N. LÜTHI  
CLERK OF THE PANEL

***BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION***

***WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.  
FREDERICK MOTZ, ROBERT L. MILLER, JR., KATHRYN H. VRATIL,  
DAVID R. HANSEN AND ANTHONY J. SCIRICA, JUDGES OF THE  
PANEL***

**HEARING SESSION ORDER**

IT IS ORDERED that on May 31, 2007, a hearing session will be held in Las Vegas, Nevada, to consider the matters on the attached Schedule under 28 U.S.C. § 1407.

IT IS FURTHER ORDERED that at said hearing session the Panel may, on its own initiative, consider transfer of any or all of the actions in those matters to any district or districts.

IT IS FURTHER ORDERED that at said hearing session the matters listed on Section A of the attached Schedule shall be designated for oral argument.

IT IS FURTHER ORDERED that at said hearing session the matters listed on Section B of the attached Schedule shall be considered without oral argument, pursuant to Rule 16.1(c), R.P.J.P.M.L., 199 F.R.D. 425, 439 (2001). The Panel reserves the prerogative, on any basis including submissions of parties pursuant to Panel Rule 16.1(b), to issue a subsequent notice designating any of those matters for oral argument.

IT IS FURTHER ORDERED that the Clerk of the Judicial Panel on Multidistrict Litigation shall direct notice of this hearing session to counsel for all parties involved in the matters on the attached Schedule.

FOR THE PANEL:



Wm. Terrell Hodges  
Chairman

SCHEDULE OF MATTERS FOR HEARING SESSION  
May 31, 2007 -- Las Vegas, Nevada

SECTION A  
MATTERS DESIGNATED FOR ORAL ARGUMENT

MDL-1835 -- In re Brian L. Roberts Litigation

Motion of plaintiff Brian L. Roberts for centralization of the following actions in the United States District Court for the Southern District of New York:

Southern District of New York

*Brian L. Roberts v. Sony Corp., et al.*, C.A. No. 1:06-6337

District of Utah

*Brian L. Roberts v. Sony, et al.*, C.A. No. 2:04-673

MDL-1836 -- In re Mirapex Products Liability Litigation

Motion of defendants Boehringer Ingelheim Pharmaceuticals, Inc., and Pfizer Inc. for centralization of the following actions in the United States District Court for the Southern District of New York or, in the alternative, the United States District Court for the District of Connecticut or other suitable United States district court:

Northern District of California

*Therese Bottiglieri v. Pfizer Inc., et al.*, C.A. No. 3:06-3248

District of Maryland

*William David Livingston, et al. v. Boehringer Ingelheim Pharmaceuticals, Inc., et al.*,  
C.A. No. 1:06-1887

District of Minnesota

*Gary Selinsky, et al. v. Boehringer Ingelheim Pharmaceuticals, Inc., et al.*,  
C.A. No. 0:06-873

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*Donald J. Nelsen v. Boehringer Ingelheim Pharmaceuticals, Inc., et al.,*  
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